

§ 750.44

32 CFR Ch. VI (7-1-03 Edition)

(2) *Property bailed to the DON.* Claims for damage to or loss of personal property bailed to the DON, under an express or implied agreement are payable under the MCA, even though legally enforceable against the U.S. Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction. Claims filed under this paragraph may, if in the best interest of the U.S. Government, be referred to and processed by the Office of the General Counsel, DON, as contract claims.

(3) *Real property.* Claims for damage to real property incident to the use and occupancy by the DON, whether under an express or implied lease or otherwise, are payable under the MCA even though legally enforceable against the DON as contract claims. Claims filed under this paragraph may, if in the best interest of the U.S. Government, be referred to and processed by the Office of the General Counsel, DON, as contract claims.

(4) *Property of U.S. military personnel.* Claims of U.S. military personnel for property lost, damaged, or destroyed under conditions in § 750.43(a) (1) and (2) occurring on a military installation, not payable under the Military Personnel and Civilian Employees' Claims Act, are payable under the MCA.

(5) *Health care and Legal Assistance Providers.* Claims arising from the personal liability of DON health care and legal assistance personnel for costs, settlements, or judgments for negligent acts or omissions while acting within the scope of assigned duties or employment are payable under the MCA. See § 750.54.

§ 750.44 Claims not payable.

(a) Any claim for damage, loss, destruction, injury, or death which was proximately caused, in whole or in part, by any negligence or wrongful act on the part of the claimant, or his agent or employee, unless the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances, and then only to the extent permitted by the law.

(b) Any claim resulting from action by the enemy or resulting directly or

indirectly from any act by armed forces engaged in combat.

(c) Any claim for reimbursement of medical, hospital, or burial expenses to the extent already paid by the U.S. Government.

(d) Any claim cognizable under:

(1) Military Personnel and Civilian Employees' Claims Act, as amended. 31 U.S.C. 3721.

(2) Foreign Claims Act. 10 U.S.C. 2734.

(3) 10 U.S.C. 7622, relating to admiralty claims. See part 752 of this Chapter.

(4) Federal Tort Claims Act. 28 U.S.C. 2671, 2672, and 2674-2680.

(5) International Agreements Claims Act. 10 U.S.C. 2734a and 2734b.

(6) Federal Employees' Compensation Act. 5 U.S.C. 8101-8150.

(7) Longshore and Harbor Workers' Compensation Act. 33 U.S.C. 901-950.

(e) Any claim for damage to or loss or destruction of real or personal property founded in written contract [except as provided in § 750.43(b) (2) and (3)].

(f) Any claim for rent of real or personal property [except as provided in § 750.43(b) (2) and (3)].

(g) Any claim involving infringement of patents.

(h) Any claim for damage, loss, or destruction of mail prior to delivery by the Postal Service to authorized DON personnel or occurring due to the fault of, or while in the hands of, bonded personnel.

(i) Any claim by a national, or corporation controlled by a national, of a country in armed conflict with the United States, or an ally of such country, unless the claimant is determined to be friendly to the United States.

(j) Any claim for personal injury or death of a member of the Armed Forces or civilian employee incident to his service. 10 U.S.C. 2733(b)(3).

(k) Any claim for damage to or loss of bailed property when bailor specifically assumes such risk.

(l) Any claim for taking private real property by a continuing trespass or by technical trespass such as overflights of aircraft.

(m) Any claim based solely on compassionate grounds.